

EXHIBIT A

Western Asset Management Company (“Western Asset”) respectfully submits this supplemental memorandum pursuant to L.R. 37-2.3, in opposition to the motion to compel served in connection with the *MissPERS* action, pending in the Southern District of New York (“Action”).

I. DISCOVERY IN THIS ACTION SHOULD BE JUDGED ON ITS RELEVANCE TO THIS ACTION, NOT THE *HARBORVIEW* ACTION

The sole dispute concerns Western Asset’s document production and deposition transcript in another lawsuit (“*Harborview*”). The moving party must affirmatively show a need to have discovery from another action and the availability of discovery in the party’s own action generally disproves any such need. *See Union Carbide Corp. v. Filtrol Corp.*, 278 F. Supp. 553, 558 (C.D. Cal. 1967).¹ Simply put, Defendants’ purported need for the *Harborview* discovery in this Action is frivolous.

Defendants’ reliance on Western Asset’s purchases of “RMBS” in both this Action and *Harborview* is nothing more than a misleading gloss on the particularized nature of the transactions in the respective cases. (Joint Stip. at 4-5.) The process of securitizing residential mortgages is immensely complex, as many courts recognize.² Securitizations involve different actors, different contracts defining the rights and duties of the parties, different underwriting standards and practices, and different credit enhancements and other protections. Loan pools also differ with respect to the proportions of full-documentation loans, second-liens, adjustable rate mortgages, and

¹ *See also Herrick v. Barber Steamship Lines, Inc.*, 41 F.R.D. 51, 52 (S.D.N.Y. 1966) (party requesting production of witness statements failed to show need because witness was available for deposition); *Tandy & Allen Const. Co. v. Peerless Cas. Co.*, 20 F.R.D. 223 (S.D.N.Y. 1957) (same).

² *See e.g., In re Lehman Bros. Mortgage-Backed Sec. Litig.*, 650 F.3d 167, 171 (2d Cir. 2011) and *Greenwich Fin. Serv. Distressed Mortg. Fund 3 LLC v. Countrywide Fin. Corp.*, 603 F.3d 23, 25 (2d Cir. 2010). As set forth in these cases, the securitization process sequentially involves mortgagors, appraisers, originators, sponsors, depositors, issuing trusts, servicers and underwriters—none of whom were the same for the securitizations involved in *Harborview* and this Action.

1 class certification in *RALI/Harborview* and this Action. (Joint Stip. at 11.) The court in
 2 *MissPERS II*, however, expressly rejected Defendants' attempt to invoke the court's
 3 findings of fact in *Harborview*, including findings regarding Western Asset, in
 4 opposition to class certification in this Action. *MissPERS II* at *6-8. The court noted
 5 Defendants' reliance on the *RALI/Harborview* decision and opined to the contrary over
 6 the next two pages, culminating with the statement that the evidence must concern "the
 7 specific offerings at issue" in this Action, not extrapolations or generalizations from the
 8 facts of *RALI/Harborview*. *Id.* at *7.

9 The highly attenuated relationship of the *Harborview* discovery to the issues in
 10 this Action do not approach the standard necessary to justify production of confidential
 11 materials in another litigation. *See, e.g. Olympic Refining Co. v. Carter*, 332 F.2d 260
 12 (9th Cir. 1964) (treble-damage antitrust suit regarding identical conduct and defendants
 13 as prior Government antitrust suit); *Kraszewski v. State Farm General Ins. Co.*, 139
 14 F.R.D. 156, 160 (N.D. Cal. 1991) (employment discrimination class actions regarding
 15 same employer, same issues and related actions).

16 Western Asset has already agreed to produce any documents that are responsive
 17 to Defendants' other requests that happen to have been produced in the *Harborview*
 18 production—that is, requests which relate to this Action. (Joint Stip. at 6.) Western
 19 Asset also offered to search its *Harborview* production and deposition transcript and
 20 produce any documents or testimony referencing Defendants, the securities at issue in
 21 this Action, and the mortgage originator and underwriter involved in this Action. *Id.*

22 **II. DEFENDANTS MISCHARACTERIZE THE BURDEN ON** 23 **WESTERN ASSET ASSOCIATED WITH PRODUCTION OF THE** 24 **HARBORVIEW DISCOVERY**

25 Defendants' argument that Western Asset's burden is minimal because the
 26 *Harborview* discovery is "easily available" grossly mischaracterizes the actual burden to
 27 Western Asset posed by Request no. 7.

28 Since the collapse of the mortgage industry, a substantial number of class actions
 have been filed regarding RMBS securitizations. Since its production in *Harborview*,

1 production is necessary to this Action.

2 Also, some courts permit discovery *about* absent class members while prohibiting
 3 discovery *on* absent class members. *See Facciola v. Greenberg Traurig LLP*, 2011 WL
 4 5244945 (D. Ariz. Nov. 3, 2011) (permitting discovery on the named plaintiff's financial
 5 advisor, who had sold securities to other class members as well as the plaintiff).
 6 Defendants' discovery here of Western Asset—an absent class member's agent and
 7 investment manager—is tantamount to discovery directly on the class member.
 8 Defendants are seeking sensitive and confidential financial information of a single
 9 absent class member without providing any particulars whatsoever regarding the
 10 information's relevance to the securities at issue in this Action.⁵ In other words,
 11 Defendants are singling out one particular absent class member to harass by seeking to
 12 compel its confidential information.

13 IV. CONCLUSION

14 For the foregoing reasons, Defendants' motion to compel should be denied.

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 26
 27 ⁵ Western Asset's production in *Harborview* consisted overwhelmingly of documents
 28 specific to that particular plaintiff, such as its monthly portfolio reports, its investment
 management contract documents, and Western Asset's presentations customized for it,
 covering a three-year period, copies of which were also in possession of the client.